



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

NOTES OF CASES.

Aliens—Right of Non-Resident Enemy Aliens to Appeal from Adverse Judgment.—*Rau v. Rowe* (Ky.), 213 S. W. 226, was an action by the widow of an intestate to subject to her claims a part of intestate's estate inherited by non-resident alien defendants, whose relation to the case was purely defensive. It was held that they were not barred of their right to appeal from an adverse judgment by reason of the declaration of war by the United States against their country prior to rendering of the judgment. The rule that the liability of an alien enemy to be sued carries with it the right to all means of defenses includes appeal as one of the means of defense.

The court said: "From the multitude of cases found on this subject the following general principles seem to have received full recognition in England, Canada, and the United States: First, that a person of enemy nationality resident in his own country can neither institute an action in the courts of the country with which his own is at war, during the continuance of the war, nor prosecute one instituted before its commencement, but such disability continues only while he is abiding in his own country, and consequently does not exist where he is permitted to enter and remain in the country in which suit is brought, unless while therein he is carrying on trade with the enemy country, is a spy, or has been guilty of other acts of hostility. *Brandon v. Nexbill*, 2 Eng. Rul. Cas. 649; *Robinson v. Cont. Ins. Co.*, 1 K. B. (Eng.) 155; *Dumenko v. Swift Canadian Co.*, 32 Ont. L. Rep. 87; *Doubler v. Hollinger Gold Mines*, 34 Ont. L. Rep. 78; *Crawford v. The William Penn*, Pet. C. C. 106 Fed. Cas. No. 3372; *Russ v. Mitchell*, 11 Fla. 80; *Seymour v. Bailey*, 66 Ill. 288; *Perkins v. Rogers*, 35 Ind. 124, 9 Am. Rep. 639; *Dorsey v. Thompson*, 37 Md. 25; *Levine v. Taylor*, 12 Mass. 8; *De Jarnette v. De Giverville*, 56 Mo. 440; *Sanderson v. Morgan*, 39 N. Y. 231; *Wilcox v. Henry*, 1 Dall. 69, 1 L. Ed. 41. Second, that where during the pendency of an action, the plaintiff becomes an alien enemy, the court is without legal authority to render judgment; and in such state of case a judgment rendered in a cause commenced before the beginning of the war can have no legal validity. In some jurisdictions the rule is that, where an action has been commenced before the war, the proceeding will be only suspended; but if instituted after the beginning of the war, it will be dismissed. In yet other jurisdictions it has been held that, where the plaintiff becomes an alien enemy after the institution of the action, it should be continued on the docket or dismissed without prejudice. *Hutchinson v. Brock*, 11 Mass. 119; *Bell v. Chapman*, 10 Johns (N. Y.), 183; *Korzinske v. Harris Cont. Co.*, 18 Quebec Pr. Rep. 97; *Whelan v. Cook*, 29 Md. 1; *Howes v. Chester*, 33 Ga. 89; *Stumpf v. A. Schreiber Brewing Co.* (D. C.), 242 Fed. 80. Third, that the liability of an alien enemy to be sued carries with it the

right to use all the means and appliances of defense that might be employed by a resident citizen of the country in which the action is brought. In other words, although the existence of war closes the courts of each belligerent to the citizens of the other, it does not prevent the citizens of one belligerent, when sued, from taking proceedings for the protection of their own property against the citizens of the other when sued by the latter, for the reason of policy which suspends the right of action of any enemy alien during the war can not and does not apply where the suit is not by one of the enemy to collect his own resources, but to subject the property of the alien to a demand asserted against him.

"As said in *Russ v. Mitchell*, 11 Fla. 80: 'It would be revolting to the rules of justice which govern a court to drag therein a party, and then say to him, "Although you are properly before the court, you are an alien enemy and shall not be heard, yet judgment shall be rendered against you."

"In *Dorsey v. Thompson*, 37 Md. 25, the rule referred to is stated as follows: 'Whether the grounds of the defense of alien enemy be the possible benefit that might result to the enemy, from allowing the plaintiff to recover, or the want of claim or right to the use of the courts of the country by the plaintiff, in consequence of his status as an enemy, the reason that creates the disability of the party as plaintiff does not apply to him as defendant. As plaintiff, the party attempts to exercise a privilege that he has forfeited, at least for the time; but as defendant, he is sought to be made amenable for what justice may require of him. The mode and manner of acquiring jurisdiction, and making the proceedings binding on him, is another and different question from that of his total exemption from suit pending hostilities. This depends upon the remedial processes of the courts; and, as is well known, they are generally wholly inadequate, during a state of actual war in suits in personam, to furnish the foundation for exercising jurisdiction over alien enemies residing in the enemy's territory. But still these enemies are liable to be sued, if within the reach of process.' *McNair v. Toler*, 21 Minn. 175; *Telephonie Sans Fil v. U. S. Service Corp.*, 84 N. J. Eq. 604, 95 Atl. 187; *Griswold v. Waddington*, 15 Johns. (N. Y.) 69; *Masterson v. Howard*, 18 Wall. 99, 21 L. Ed. 764; *Porter v. Freudenberg*, 1 K. B. (Eng.) 857.

"A leading case on the question under consideration is that of *McVeigh v. United States*, 78 U. S. (11 Wall.) 259-268, 20 L. Ed. 80, the action being one brought during the Civil War, under an act of Congress passed in 1862, to confiscate for the purpose of the United States Government certain property within its territory belonging to McVeigh, then a resident of the city of Richmond, Va., within the Confederate lines and designated a 'rebel.' Being constructively in court McVeigh filed an answer, asserting his right to the property and resisting that of the United States to deprive him of it. The

court below struck the answer from the files, and entered a decree for the sale of the property. In reversing the judgment and setting aside the sale of the property, the Supreme Court of the United States, in part said: 'In our judgment the district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and answer could have no locus standi in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. * * * Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to use all the means and appliances of defense.'

"In the subsequent case of *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914, involving the title to the same property, the case of *McVeigh v. United States*, supra, was cited, and the above principle therein announced was approved in the following language: 'Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations.'

"In the still later case of *Hovey v. Elliott*, 167 U. S. 409, 17 Sup. Ct. 841, 42 L. Ed. 215, the Supreme Court of the United States cited the *McVeigh Case*, and, after discussing at length numerous authorities, strongly approved its statement of the doctrine in question.

"In *Buford v. Speed*, 11 Bush, 338, we held that (quoting from the syllabus): 'The provision of the Federal Constitution, declaring that "no person shall be deprived of life, liberty, or property without due process of law," is applicable to alien enemies, and gives them the right, when proceeded against by legal process, to appear in person or by counsel, whom they have a right to employ, and to introduce evidence and make defense; and, further, that "where a husband left his wife in possession of his property and joined the Confederate Army, and proceedings to confiscate his property were instituted in the Federal court under the act of Congress, the wife had authority, by implication of law, to employ the ordinary means of making defense, by hiring and contracting to pay counsel, and he is bound by her action, whether she had express authority or not."'"

Constitutional Law—Referendum of Amendment to Federal Constitution.—In *State v. Howell*, 181 Pac. 920, the Supreme Court of Washington, held that under a state constitutional provision for referendum of "acts, bills, or laws," a joint resolution of the state leg-